other person authorized to make the same, at which the mortgagee, payee or other holder of the obligation thereby secured becomes the purchaser and takes title either directly or indirectly, and thereafter such mortgagee, payee or other holder of the secured obligation, as aforesaid, shall sue for and undertake to recover a deficiency judgment against the mortgagor, trustor or other maker of any such obligation whose property has been so purchased, it shall be competent and lawful for the defendant against whom such deficiency judgment is sought to allege and show as matter of defense and off-set, but not by way of counter-claim, that the property sold was fairly worth the amount of the debt secured by it at the time and place of sale, or that the amount bid was substantially less than its true value, and, upon such showing, to defeat or off-set any deficiency judgment against him, either in whole or in part; *Provided*, this section shall not affect nor apply to the rights of other purchasers or of innocent third parties, nor shall it be held to affect or defeat the negotiability of any note, bond or other obligation secured by such mortgage, deed of trust, or other instrument: *provided, further*, this section shall not apply to foreclosure sales made pursuant to an order or decree of court nor to any judgment sought or rendered in any foreclosure suit nor to any sale heretofore made and confirmed."

2.

By the express provisions of the foregoing statute the ancient right of the holder of an indebtedness, the payment of which is secured by deed of trust or mortgage, to institute foreclosure proceedings in the courts, is preserved to appellant and all others similarly situated and, therefore, no Federal question is presented.

3.

It becomes immediately apparent that the statute complained of deals solely and entirely with the remedy or

procedure to which the holder of a debt secured by mortgage may resort for the enforcement of collection.

There is no vested right in any given mode of procedure and so long as a substantial and efficient remedy remains or is provided due process of law is not denied by a legislative change.

Crane v. *Hahlo*, 258 U. S. 142, 147.

It is true that the remedy for the enforcement of a contract sometimes enters into the contract itself, but that is where an endeavor has been made to so change the existing remedy that there is no effective and enforceable one left, or the remedy is so far impaired that the party desirous of enforcing the contract is left practically without any means of doing so; but in the case of an alteration of a remedy, if one is left or provided which is fairly sufficient, the obligations of a contract are not impaired, although the remedies existing at the time it was entered into are taken away.

Waggoner v. *Flack*, 188 U. S. 595, 602;
Oshkosh Water Works Co. v. *Oshkosh*, 187 U. S. 437;
National Surety Co. v. *Architectural Decorating Co.*, 226 U. S. 276.

For the reasons stated herein, appellees move that this appeal be dismissed.

Respectfully submitted,

R. R. Williams,
Counsel for Appellees.
S. G. Bernard,
Of Counsel for Appellees.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 235

RICHMOND MORTGAGE & LOAN CORPORATION,
Appellant,

vs.

WACHOVIA BANK & TRUST COMPANY AND ALEXANDRA GARRETT JOHNSTON, EXECUTORS OF THE ESTATE OF ROBERT P. JOHNSTON, DECEASED,
Appellees.

MOTION.

To Richmond Mortgage & Loan Corporation, Appellant:

Now come the Wachovia Bank & Trust Company and Alexandra Garrett Johnston, Executors of the Estate of Robert P. Johnston, deceased, Appellees, and upon the grounds set forth in their accompanying statement opposing the jurisdiction of this Court and stating matters and grounds making against such jurisdiction, the said appellees move that this appeal be dismissed.

R. R. WILLIAMS,
Counsel for Appellees.
S. G. BERNARD,
Of Counsel for Appellees.

(8034-C)